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Sup. Ct.
Supreme Court of the United States

OCTOBER TERM, 1947

No. 290

JAMES M. HURD AND MARY I. HURD,
PETITIONERS,

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE,
PASQUALE DERITA, ET AL.

No. 291

RAPHAEL G. URCILO, ROBERT H. ROWE,
ISABELLE J. ROWE, ET AL., PETITIONERS,

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE,
PASQUALE DERITA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 22, 1947.

CERTIORARI GRANTED OCTOBER 20, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 290

JAMES M. HURD AND MARY I. HURD,
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

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JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

*United States Court of Appeals
for the District of Columbia*

No. 9196

FILED MAY 31 1946

Joseph W. Stewart
CLERK

JAMES M. HURD, ET AL., Appellants,

VS.

FREDERIC E. HODGE, ET AL., Appellees

**Appeal from the District Court of the United States for the
District of Columbia**

FILED MARCH 13, 1946.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

No. 9196

JAMES M. HURD AND MARY I. HURD, *Appellants*,

vs.

**FREDERIC E. HODGE, LENA A. MURRAY HODGE,
PASQUALE DE RITA, VICTORIA DE RITA, CON-
STANTINO MARCHEGIANI, MARY M. MARCHE-
GIANI, BALDUINO GIANCOLA AND MARGARET
GIANCOLA, *Appellees***

**Appeal from the District Court of the United States for the
District of Columbia**

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**District Court of the United States
for the District of Columbia**

Civil Action No. 26192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

**UNITED STATES OF AMERICA,
District of Columbia, ss:**

Be It Remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled action, to wit: .

1 In the District Court of the United States for the District of Columbia

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant Street, N.-W.; Pasquale De Rita, Victoria De Rita, 128 Bryant Street, N. W.; Costantino Marchegiani, Mary M. Marchigiani, 124 Bryant Street, N. W.; Balduino Giancola, Margaret Giancola, 130 Bryant Street, N. W.; Francis M. Lanigan, 122 Bryant Street, N. W.; John J. Luskey, Marie E. Luskey, 148 Bryant Street, N. W., Plaintiffs,

vs.

JAMES M. HURD, MARY I. HURD, 116 Bryant Street, N. W.; Francis X. Ryan, Mary R. Ryan, 300 Gallatin Street, N. W., Defendants

Complaint for Injunction

The plaintiffs respectfully represent to this Honorable Court as follows:

1. That plaintiffs are citizens of the United States and residents of the District of Columbia.

2. That defendants, Hurd, are citizens of the United States, residents of the District of Columbia, and are of the

Negro race or blood. Defendants, Ryan, are citizens of the United States, residents of the State of Maryland, and are of the White race.

3. That defendants, Hurd, are the present owners of record of a certain parcel of real estate in the District of Columbia, described as "lot 114 in the subdivision made by Middaugh & Shannon, Incorporated, of lots in Block 2 numbered 25 "addition to Le Droit Park", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1; said Block being now known for purposes of assessment and taxation as Square 3125," with improvements known as 116 Bryant Street, N. W.

4. That plaintiffs, Hodges, are the owners in fee simple and the occupants of lot 143, square 3125, improved by premises No. 136 Bryant Street, N. W.; plaintiffs, Pasquale De Rita and Victoria De Rita, are the owners in fee simple and the occupants of lot 108, square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs, Costantino Marchegiani and Mary M. Marchegiani, are the owners in fee simple and the occupants of lot 110, square 3125, improved by premises 124 Bryant Street, N. W.; plaintiffs, Balduino Giancola and Margaret Giancola, are the owners in fee simple and the occupants of lot 808, square 3125, improved by premises 130 Bryant Street, N. W.; plaintiff, Francis M. Lanigan, is the owner in fee simple and the occupant of lot 111, square 3125, improved by premises 122 Bryant Street, N. W.; and plaintiffs, John J. Luskey and Marie E. Luskey, are the owners in fee simple and the occupants of lot 137, square 3125, improved by premises No. 148 Bryant Street, N. W. Plaintiffs are all persons of the White race.

5. That all of the real estate described herein as being owned by the plaintiffs and defendants is located on the south side of Bryant Street, Northwest, between First and Second Streets, in the District of Columbia (there being no development on the north side of said street other than the United States Reservoir Grounds); that all of the properties herein described, as well as all other properties on the west side of First Street, N. W., between Adams and Bryant Streets, and all properties on Bryant Street from First Street through 152 Bryant Street, were erected and sold through Middaugh & Shannon, Incorporated, said group of houses being known as "Middaugh & Shannon, Inc. sub-

division of lots in Block 25, Addition to LeDroit Park, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20, at folio 1;" that Middaugh & Shannon, Inc. sold all of said lots or properties by and through the usual form of deed in which the following covenant, running with the land, has appeared in the deeds to all of the properties in said subdivision, including the property now owned and occupied by the Negro defendants, Hurd, all of which said deeds were duly recorded among the Land Records of the District of Columbia:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

6. That by deed dated and recorded December 5, 1905 as Instrument No. 76 in Liber 2988 at folio 78 in the Land Records of the District of Columbia, Middaugh & Shannon, Inc., conveyed lot 114, square 3125 to Thomas P. Rooney, and thereafter, by mesne conveyances, the defendants, Francis X. Ryan and Mary R. Ryan, his wife, became the owners of said property by deed from Frederic Richmond and Pearl Richmond, his wife, recorded among the said Land Records on May 9, 1944 as Instrument No. 12559, being dated May 3rd, 1944 and acknowledged before a Notary Public on May 5, 1944. Said defendants, Ryan, on the same day (May 9th, 1944) by deed dated May 4, 1944, and acknowledged before a Notary Public on May 4, 1944, conveyed said property to the defendants, Hurd, persons of the Negro race; said deed being recorded as Instrument No. 12561, no reference being made in either deed to any covenants of record as to Negro ownership or occupancy. Both transactions were consummated simultaneously at the offices of the District Title Insurance Company, 1413 I Street, N. W., and all parties were duly informed as to the Negro covenant, hereinbefore set forth, running with the land and binding all parties.

7. That all of said properties in said 100 block of Bryant Street, N. W., from First Street through No. 152 Bryant St., are now owned and occupied by persons of the White race, except the property, the subject of this suit. Following the sending of a Registered Mail, postage prepaid, letter on

June 30, 1944, by Henry Gilligan, attorney for these plaintiffs, to said defendants, Hurd, said defendants replied under date of July 25th, 1944, stating they would "move from the neighborhood" and requesting "sufficient time within which to comply with the (your) mandate", stating that the defense of laches would not be pleaded to any action brought.

8. Plaintiffs aver that defendants, Ryan and Hurd, are charged with notice by law and by actual knowledge of said covenant of record herein set forth, running with the land; that in addition they had such knowledge of said covenant before defendants, Hurd, moved into said property; and that they knowingly and wilfully consummated the transactions, and the defendants, Hurd, became the owners and occupants of said property in contravention of said covenant of record, which has never been abrogated or nullified, and now is in full force and effect.

9. That said parcels of real estate herein described and belonging to plaintiffs were each acquired by said plaintiffs, respectively, subject to and restricted by said covenant of record; that all the plaintiffs and defendants derive title either directly or by mesne conveyances from Middaugh & Shannon, Inc.; that all of said plaintiffs purchased his, her or their said dwellings upon the advice and under the belief that said covenant was binding upon said plaintiffs as well as upon owners of all property in the portion of square 3125 developed by said Middaugh & Shannon, Inc., and that all of said property was subject to the same covenant and restriction and penalty for violation; that said neighborhood is residential in character and the property located therein is of good value.

10. Plaintiffs aver that the above mentioned deed and conveyance of lot 114, square 3125, and improvements thereon, from Francis X. Ryan and wife to James M. Hurd and Mary I. Hurd, his wife, persons of the Negro race or blood, are a nullity and of no effect, and said deed and conveyance confer no property rights upon said defendants, Hurd, for the reason that they unlawfully and wilfully acquired said deed and accepted said conveyance in violation of the aforesaid covenant of record; that the continued occupancy of said property by the defendants, Hurd, as well as to permit the deed and conveyance from defendants, Ryan, to said defendants, Hurd, to remain a matter of record, and said grantees to continue the owners and occu-

pants of said property, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiffs, and will be harmful, detrimental and subversive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will become depreciative in value, and undesirable as a neighborhood wherein White people may live; that the continued occupancy and/or ownership by the defendants, Hurd, or any person or persons of the Negro race or blood, will constitute a continuing wrong and injury that is irreparable, and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction.

Wherefore, plaintiffs demand,

1. That the defendants, James M. Hurd and Mary I. Hurd, be enjoined, during the pendency of this suit, and permanently thereafter, from selling, renting, leasing, transferring or conveying premises 116 Bryant Street, Northwest, in the District of Columbia, to Negroes or colored persons or persons of the Negro race or blood, and from permitting said premises to be occupied by said Negroes or persons of the Negro race or blood.

2. That the defendants, James M. Hurd and Mary I. Hurd, be enjoined, pending this suit, and permanently thereafter, from occupying said premises, 116 Bryant Street, Northwest, and that said defendants, by Order of this Court, be directed to vacate said premises immediately, and to remove therefrom all household goods and other effects belonging to said defendants.

3. That the deed dated May 4, 1944 and recorded May 9th, 1944 as Instrument No. 12561 among the Land Records of the District of Columbia, from the defendants, Francis X. Ryan and Mary Ryan, his wife, to defendants, James M. Hurd and Mary I. Hurd, his wife, be cancelled, and a judgment be entered herein declaring said conveyance void and of no effect, and further declaring title to be in Francis X. Ryan and Mary Ryan, his wife, subject to the restrictions and penalty of the covenant of record herein set forth.

4. That plaintiffs have judgment for costs, and that a reasonable attorneys' fee be allowed.

5. That they be allowed such other and further relief as shall be proper.

Motion for Preliminary Injunction

Come Now the plaintiffs through their attorney and move this Honorable Court to issue out of this Court a preliminary injunction commanding and compelling the defendants, James M. Hurd, Mary I. Hurd, Francis X. Ryan and Mary R. Ryan, and each of them, to conform to, abide by and comply with the covenant or restrictive deed provision of record, running with the land known as 116 Bryant Street, Northwest, (Lot 114, Square 3125) in the District of Columbia; and further, enjoining defendants James I. Hurd and Mary I. Hurd from selling, renting, leasing, transferring or conveying said land and premises to Negroes or any person or persons of the Negro race or blood; and further, enjoining said defendants from using or occupying said premises, and from suffering or permitting said premises to be used or in any manner occupied by any other person or persons of the Negro race or blood.

And for reasons therefor plaintiffs refer to the verified Complaint filed in this cause, and such other matters as may properly be brought to the attention of the Court.

Answer

Defendants James M. Hurd and Mary I. Hurd answer the complaint as follows:

1. They admit the allegations of paragraph 1.
2. They deny the allegations of paragraph 2.
3. They admit the allegations of paragraph 3.
4. They deny plaintiffs or any of them is of the white race, and neither admit nor deny the allegations of ownership set forth in paragraph 4 and call for strict proof as far as the allegations are material.
5. 6. They neither admit nor deny the allegations of paragraphs 5 and 6 except they deny defendants Hurd are persons of the Negro race and admit the conveyances to defendants and the transaction at the Title Company as alleged. Otherwise they call for strict proof as far as the allegations are material.

7. They deny the allegations of paragraph 7, except they admit the correspondence alleged.

8. They admit defendants Hurd knew of the alleged covenant before they moved in the premises, but are advised by counsel the other allegations in said paragraph are conclusions of law, call for no answer and they do not answer the same.

9. They deny the allegations of paragraph 9.

10. They deny the allegations of fact in paragraph 10, and make no answer to the conclusions of law.

11. Further answering, defendants say that the 100 block of Bryant Street, Northwest was not at any time material herein a so called "white" neighborhood, is not such now, and could not be made such by any action of this Court, and a decree for plaintiffs in this suit would be futile; that the neighborhood, square and surrounding area have completely changed in character since the original conveyances by Middaugh and Shannon, Inc., and that the purposes which called forth said covenants, if any, cannot now be accomplished and a decree would be futile.

12. Further answering, defendants say that plaintiffs have abandoned the enforcement of said covenant and lost all rights to demand enforcement thereof by acquiescing in the acquisition of all the "Middaugh & Shannon, Inc." houses in Square 3125 fronting on Adams Street, Northwest.

First Defense

The alleged covenant is void.

Second Defense

The purposes of the covenant are no longer possible of enforcement, because of change of neighborhood.

Order Advancing Cause for Trial and Denying Motion Without Prejudice

Upon motion of plaintiffs in open court, defendants consenting, to have the instant cause advanced for trial and it appearing to the court upon consideration of the complaint and answer that it is desirable to have the issues determined upon a complete record as soon as practicable, it is this 2d day of November, 1944, Ordered,

1. That this cause be advanced for hearing on the merits.
2. That the plaintiff's motion for preliminary injunction be denied, without prejudice.

*Motion for Change of Trial Justice, and Affidavit as to
Personal Bias or Prejudice*

DISTRICT OF COLUMBIA, SS:

James M. Hurd, a party defendant in the above cause, being first duly sworn on oath states that he charges the Honorable F. Dickinson Letts, the Justice presiding at the trial of this cause, with personal prejudice and bias against him and his wife, also a co-defendant; that this cause was brought against affiant and his wife, as well as two other persons their grantors, to cancel the deed to affiant and his wife and to evict them from premises 116 Bryant Street, Northwest (Lot 114, Square 3125 in the District of Columbia) on the ground that they are Negroes and have taken title and possession in breach of the following covenant which burdens the title to said property, according to the allegations of the complaint:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000); which shall be a lien against said property."

That on Saturday, October 13, 1945, affiant's counsel discovered that the presiding justice lives in and has an interest in premises 3500 Garfield Street, Northwest (Lot 32, Square 1942 in said District), title to which is burdened by the following covenant: Liber 4660, f. 148, Recorder of Deeds.

"Subject to the covenants to run with the land perpetually, that said land and premises will not be sold, rented or conveyed, the whole nor any part thereof, or any structure thereon, to any person of African descent;

That in said trial the presiding justice has been personally biased and prejudiced against affiant and his wife who are

alleged to be colored, and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in the case.

12 That the instant cause came on for hearing on October 9, 1945 at 1:30 p. m.; that it was not known for certainty until that moving before whom the case would be tried; that no information was available to put affiant on inquiry and he had no reason to believe that the justice lived in property subject to such a covenant until his counsel was given such information by telephone about 4:30 p. m. Friday, October 12, 1945; that investigation was made and the facts ascertained about 1:30 p. m. Saturday, October 13, 1945 after the Clerk's office had been closed; and affiant has made and filed this affidavit of prejudice and bias at the first possible moment after the facts were discovered.

Wherefore affiant respectfully requests that the presiding justice proceed no further herein but that another Justice shall be designated in the manner prescribed in section 24 of Title 28, United States Code, or chosen in the manner prescribed in section 27 of said Title, or certified in the manner prescribed in Section 314, Title 11, D. C. Code, 1940 (Mar. 3, 1901, ch. 854, sec. 67) to hear and decide this cause.

JAMES M. HURD.

Subscribed and sworn to before me this 15th day of October, 1945.

MARY G. MURR,
Notary Public for D. C.

Certificate of Counsel.

I, Charles H. Houston, counsel of record for affiant, defendant James M. Hurd, do hereby certify that the foregoing application and affidavit are made and presented in good faith.

13

Filed February 25, 1946

In the District Court of the United States for the District
of Columbia

Civil Actions Nos. 26192 and 29943

FREDERIC E. HODGE, et al, Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

and

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URGIOLO, et al, Defendants

Certified Record of Official Court Reporter Proceedings
before Associate Justice Petts, Tuesday, October 9, 1945.

14 In the District Court of the United States for
the District of Columbia, Civil Division No. 3

Civil Division No. 3

Civil Action No. 29,943

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant
St., N. W., Pasquale De Rita, Victoria De Rita, 128
Bryant St., N. W., John J. Luskey, Marie E. Luskey,
148 Bryant St., N. W., Constantino Marchegiani, Mary
M. Marchegiani, 124 Bryant St., N. W., Balduino
Giancola, Margaret Giancola, 130 Bryant St., N. W.,
Helen E. Pyles, 1739 Q St., N. W., Melville Gibbs Skinner,
Helen Augusta Skinner, 1832 Kilbourne Pl., N. W., Plain-
tiffs,

vs.

RAPHAEL G. URGIOLO, 907 New York Ave., N. W., FLORENCE
E. URGIOLO, 1630 Webster St., N. W., Robert H. Rowe,
Isabelle J. Rowe, 50 Florida Avenue, N. W., Herbert B.
15 Savage, Georgia N. Savage, 3507 New Hampshire
Ave., N. W., Pauline B. Stewart, 2015 - 13th St., N. W.,
Defendants.

Civil Action No. 26,192

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 166 Bryant St., N. W., Pasquale De Rita, Victoria De Rita, 128 Bryant St., N. W., Constantino Marchegiani, Mary M. Marchigiani, 124 Bryant St., N. W., Balduino Giancola, Margaret Giancola, 130 Bryant St., N. W., Francis M. Lanigan, 122 Bryant St., N. W., John J. Luskey, Marie E. Luskey, 148 Bryant St., N. W., Plaintiffs,

VS.

JAMES M. HURD, MARY I. HURD, 116 Bryant Street, N. W., Francis X. Ryan, Mary R. Ryan, 300 Gallatin Street, N. W., Defendants.

16-17 Washington, D. C., Tuesday, October 9, 1945.

The above-entitled matters came on for trial before Hon. F. Dickinson Letts, Associate Justice, at 1:30 o'clock p. m.

Appearances: Henry Gilligan, Esq., for the Plaintiffs. Charles H. Houston, Esq., for all defendants with the exception of Raphael G. Urciolo. Raphael G. Urciolo, Esq., appearing in his own behalf.

18-25 *Proceedings*

The Clerk: Frederic E. Hodge, et al versus James M. Hurd, et al, Civil Action No. 26,192, and Frederic E. Hodge, et al, versus Raphael G. Urciolo, et al, Civil Action No. 29,943..

26 Mr. Urciolo: In that event, may I ask Your Honor, then, to please allow me to adopt the pleadings heretofore, and that I be allowed to represent myself? I will adopt the pleadings heretofore. After all, I
27 think that Mr. Gilligan,—he has no objection to the withdrawal of Mr. Houston, provided that I accept all of the pleadings heretofore filed.

The Court: And it may be understood that you may be admitted for the purposes of this case and appear in your own behalf.

28-34 Mr. Houston (interposing): Let me make this statement:

As counsel for Mrs. Urciolo, I state for the Court, for the purpose of inducing a dismissal; that Mrs. Urciolo has no substantial interest whatsoever in any property involved in this case, or any property on Bryant Street, Northwest, in the 100 block. Any paper interest or record interest which she may have, she holds simply as a straw for her husband, Raphael C. Urciolo.

Mr. Gilligan: And if necessary, would so testify?

Mr. Houston: She is present, and will so testify.

Mr. Gilligan: I am perfectly willing to have her dismissed as a defendant.

The Court: Then, the case will stand dismissed as to Mrs. Urciolo.

35 Mr. Gilligan: Mr. Luskey is an invalid, and while able to walk alone, on the street, a little, the doctor has told him that he must not under any circumstances testify. I have also a statement from Dr. J. Chester Brady, to the effect that he did not want Mrs. Luskey to testify in the case.

For that reason, I am perfectly willing for those two people to be withdrawn as plaintiffs in both cases.

Then, there is a Miss Pyles, who is a plaintiff in this case.

Mr. Fichter—

Mr. Fichter: She is not present. She is totally blind and out of the city and unable to appear, but she has the interest of the community at heart.

Mr. Gilligan: How long has she been out of the city?

Mr. Fichter: She has been out for over three months.

Mr. Gilligan: I am willing to have Miss Pyles' name withdrawn as a plaintiff. That leaves the last two in the second case, the Skinners and the Skinners are elderly people and explained to the plaintiffs that because of the fact that they were elderly people and practically house-ridden, that they would be very glad to send their representative, a daughter who handles the business affairs, down to testify, and I have said that in my judgment that was
36-37 not proper and for that reason I am very happy to withdraw the Skinners as plaintiffs in this case, so

that the plaintiffs in the two case- will be exactly the same.

Mr. Houston: Lanigan is dead.

Mr. Gilligan: Francis Lanigan, the plaintiff in the original case, died, has died. His daughter is here and will be willing to be substituted as a plaintiff in both cases, inasmuch as she is one of the heirs of her father, who had no will.

The Court: Lanigan—I don't see that.

Mr. Gilligan: Here it is, here (indicating).

The Court: I was looking over here (indicating).

Mr. Gilligan: It is not in the other case.

We withdraw Francis Lanigan.

The Court: So that plaintiffs will remain the same in both cases?

Mr. Urciolo: What about the Marchegianis?

Mr. Houston: Let me state this: That we are not bound of course, by representations of counsel as to the reasons why the parties do not appear. The mere fact is, that the only thing we have in front of us, and that is without any reflection on Mr. Gilligan's accuracy,—is simply that the parties are not in the court ready to go ahead.

38-42 Mr. Gilligan: The plaintiffs in both cases are—Fred-
eric E. Hodge and Lena A. Murray Hodge, 136 Bry-
ant Street, Northwest; Pasquale de Rita and Victoria De
Rita, 128 Bryant Street, Northwest; Constantino March-
egiani and Mary M. Marchegiani, 124 Bryant Street, North-
west; Balduino Giancola and Margaret Giancola, 130 Bry-
ant Street, Northwest,—those four houses, in both cases.

Mrs. Houston: I wanted to see whether his Honor is going to rule on my motion.

The Court: The objection to the consolidation will be overruled.

43 Mr. Gilligan: If your Honor please, in the stipula-
tions, in this original case,—do you have them before
you?

The Court: The stipulations? You mean the pre-trial
order?

Mr. Gilligan: 26192, pre-trial, yes, sir. You were the
pre-trial justice.

The Court: Yes.

Mr. Gilligan: I would like to read it in order that the Court may have it definitely before it. I think the stenographer can get it from the stipulation.

The first stipulation is:

"1. All of the real estate described in this action, owned by plaintiffs and defendants, is located within that Middaugh-Shannon development of Bryant Street, Northwest, lying on the south side of said street west of First Street down to and including the property known as 152 Bryant Street, Northwest, consisting of 20 houses, subject to the above deed covenant. The 11 houses west of 152 Bryant Street, N. W., ran down to Second Street, N. W., are not subject to the above covenant or any other covenant as to Negro ownership or occupancy. All of said properties are in block 25, Addition to Le Droit Park, the plat of Middaugh-Shannon development being recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1. In Square 3125
44 (bounded by Bryant Street, N. W. on the north, the west side of First Street, N. W. on the east, the north side of Adams Street on the south, and the east side of Second Street on the west) in addition to the Middaugh-Shannon houses on Bryant Street, N. W., subject to the above deed covenant, all of the houses on the west side of First Street and nine houses in the middle of Adams Street, are Middaugh-Shannon built houses, subject to said covenant; all other houses in said Square 3125 are not subject to said covenant."

And, the deed covenant is set forth at the beginning of the case.

The second stipulation is that:

"2. Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., by Mesne conveyances since December 5, 1905, the date of the conveyance from Middaugh-Shannon Inc. to Thomas P. Rooney, became the property of the defendants, Francis X. Ryan and Mary R. Ryan, his wife, by deed from Frederick Richmond and wife, dated May 3d, 1944, recorded on May 9th, 1944, as Instrument No. 12559, who deeded it by deed dated May 4th, 1944, and recorded May 9th, 1944,

as Instrument No. 12561 to the defendant; James M. Hurd and Mary I. Hurd, his wife, who now occupies said premises."

I think I should add, right at this point—

45 The Court: Now?

Mr. Gilligan: Perhaps not.

The Court: You cannot add; you are talking about the stipulation, now.

Mr. Gilligan: Pardon me, that is correct.

"3. Plaintiffs Hodges are the owners in fee simple and the occupants of Lot 143 Square 3125 (No. 136 Bryant Street, N. W.); plaintiffs Pasquale De Rita and wife are the owners and occupants of Lot 108, Square 3125 (128 Bryant Street, N. W.); plaintiffs Marchegiani are the owners in fee simple and the occupants of Lot 110, Square 3125 (124 Bryant Street, N. W.); plaintiffs Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125 (130 Bryant Street, N. W.); plaintiff Francis M. Lanigan is the owner in fee simple and the occupant of Lot 111, Square 3125 (122 Bryant Street, N. W.); plaintiffs Luskey are the owners in fee simple and the occupants of Lot 137, Square 3125 (128 Bryant Street, N. W.).

"4. The plat initialed by the Pre-trial Justice, may be received in evidence without formal proof, but subject to check as to accuracy.

That means the plat which is before Your Honor is also admitted without formal proof, but subject to check as to accuracy.

46 "5. The letter from J. M. Hurd to Henry Gilligan dated July 25, 1944, may be received in evidence without formal proof; initialed by Pre-trial justice.

"6. The carbon copy of letter from Henry Gilligan to James M. Hurd, dated June 30, 1944, initialed by Pre-trial justice may be received in evidence without formal proof, provided the original of said letter is not available at trial."

That is all of the stipulation.

Now, if Your Honor please, in order that the facts may be before the Court, I should say that the defendants admit

the ownership of the several properties, the six properties, by Mr. Urciolo or Mrs. Urciolo, and the other defendants Rowe, Savage, and Stewart.

The Court: As alleged.

Mr. Gilligan: As alleged. That is admitted in their answer.

I want to call Your Honor's attention, at this time, before proceeding with the case, to a suit which was filed by Mr. Urciolo against Mr. Delavigne and all the other owners of these various properties under the deed covenant on Bryant Street. He calls this a "complaint for injunction to quiet title," Civil Action No. 27958, filed March 5, 1945.

In this action he attempts to get an injunction to enjoin the plaintiff, all of these defendants, I should say, from bringing any action for an injunction against him as the owner of these various properties, and also to remove the cloud on the title to these six,—these six titles,—the cloud being this restrictive covenant in the deed.

After Mr. Urciolo sold three of his properties to the people whom we allege to be colored, and before service was had on all these defendants in this case, Mr. Houston, who represented him, called me and said he was going to dismiss that case, so that the case is actually dismissed. There it is (indicating) and I would like to put this into the record as Plaintiffs' Exhibit 1, if I may.

Mr. Houston: No objection.

The Court: Has it been formally dismissed,—has it Mr. Houston?

Mr. Houston: Yes, Your Honor.

The Court: It may be admitted.

(Thereupon the document identified by counsel as "Complaints injunction to quiet title, Civil Action No. 27958," was marked Plaintiffs' Exhibit No. 1 and by the Court admitted in evidence.)

Mr. Gilligan: I think we will be able to show your Honor, in the course of this case, that all the territory to the east of the particular 100 block of Bryant Street, from First to North Capitol, all of First Street between Bryant and Adams, to the south of Bryant on both sides of the street, all of the 2400 block of First Street which is above
48 Bryant, as far as the houses go on that First Street, all of Channing Street between North Capitol and First, the block immediately above Bryant, all of Bryant

Street itself, between North Capitol and First and all of Adams Street between North Capitol and First are either under deed covenant or restricted agreement which are still in effect, and all of the properties in all those blocks are occupied by white people, we say.

The Court: Is that a stipulation?

Mr. Gilligan: That is in the stipulation. I am simply outlining my case. I wanted you to get the facts so that you could see the case we have.

Mr. Houston: Not on the—

Mr. Gilligan (interposing): The west side of Adams, is under deed covenant; the east side of that block, Mrs. Mays lives at 2210 First Street. I think Your Honor is familiar with that, inasmuch as the matter was before you in a contempt proceeding. She still lives there. That action has to September first, 1946 to run.

I think if we can show your Honor that these are the facts, and that the Savages and the Hurds and Miss Stewart are negroes, that with actual knowledge and constructive knowledge and after being put on notice also, that they have moved into their properties after they had been served with processes, this complaint, and that Mr. Urciolo owns the other three houses and is attempting to sell them to colored, or expects to sell them to colored, I shall ask Your
49a Honor to give us a permanent injunction against the three colored families, requiring them to move from the premises immediately, setting aside the deeds from the Urciolos to them, and also an injunction preventing Mr. Urciolo from disposing of any of the other three houses to negroes.

Mr. Houston: If your Honor please, we start out with the proposition, we deny that the plaintiffs are white, we deny that this is a white neighborhood, obviously we deny that the covenant is valid. We deny that all the defendants are colored. We say there has been a change of neighborhood. We say that the covenant is unenforceable, that an injunction should not issue because the object of the injunction could not be obtained, and that the purposes of the covenant can no longer be achieved, and with that statement and in view of the fact that we have already noted our objection to the consolidation, I rest.

Mr. Gilligan: / all Mrs. Hodge.

Whereupon—MRS. LENA A. MURRAY HODGE, called as a witness by and on behalf of the plaintiff, and after having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gilligan:

Q. What is your full name?

51 A. Lena A. Murray Hodge.

Q. Where do you live?

A. 136 Bryant Street, Northwest.

Mr. Gilligan: Inasmuch as the ownership of these properties is admitted, I don't think it is necessary to present these deeds (indicating), although I am perfectly willing to have it done.

Mr. Houston: She is an original owner?

Mr. Gilligan: An original owner.

By Mr. Gilligan:

Q. When did you buy your home, Mrs. Hodge?

A. September, 1909.

Q. Did you buy it in your name alone?

A. No, my husband and I, Frederic Elliot, and I.

Q. Frederic Hodge and Lena A. Murray?

A. The house was bought before we were married.

Q. And you have lived there in that house ever since?

A. 26 years this past Saturday.

Q. At the time of your purchase did you or did you not know anything about the deed covenant in connection with that property or any other property on your block?

A. We certainly did, because that was about the first thing that the agent for those Middaugh & Shannon houses told us when we went there to look at the houses. He pointed out the deed covenant, that the covenant that
52 was in the deed to the house, which of course we liked.

The Court: What covenant? Do you want to make that clear for the record?

Mr. Gilligan: Which covenant?

The Court: What the covenant was.

Mr. Gilligan: It is a covenant that appears in the stipulation, if your Honor please. I might ask the witness.

By Mr. Gilligan:

Q. Can you tell his Honor just what that is?

A. Yes. The covenant read that this property can never be sold, rented, or in any other way conveyed to negroes or persons of negro blood under penalty of \$2,000, which would be a lien against the property.

Q. That is generally correct.

Now, Mrs. Hodge, over the years in which you have lived in the particular house where you are now living, have there been any houses in the 20 houses down through 152 that were sold to or rented to colored people?

A. Well, yes; there have been two rented, but in both cases, one that was rented, the people moved in but in some way they found out with regard to this covenant and never occupied the house, and I might say this—that they made the real estate dealer who rented that house pay them—

Mr. Houston: I object.

The Court: Sustained. Just answer Mr. Gilligan's question.

The Witness: All right. Then, at 144, that was rented a couple of times but they never occupied the house. They moved out or didn't occupy it, in fact.

By Mr. Gilligan:

Q. Did any colored people ever move in prior to the Hurds?

A. No, not that occupied it.

Q. Any of those—

Mr. Houston (Interposing): What was the last?

The Court: Not and occupied the houses, as I understood it.

The Witness: No.

By Mr. Gilligan:

Q. In the same 20 houses, was any house ever sold to colored people prior to the one to Hurd?

A. Yes, 152 was sold about, I would say—about a year ago last spring. It was sold; I do not know the name, but

it was sold by Mr. Thrift and Mr. Gruver, I think the name was, to colored.

Q. What happened in that case? Do you know, of your own knowledge?

A. Yes, I do, because after we found out that this happened, I contacted Mr. Gilligan as our attorney in regard to it, and called the plaintiffs to my house to find

54 out what we could do about it, and Mr. Gilligan immediately took steps to see Mr. Thrift or Mr. Gruver and the parties who bought it, and they gave up ownership of the house without any trouble whatever.

Q. So, prior to the occupancy by the Hurds, no house had ever been occupied for any length of time in that twenty houses?

A. No.

Q. Do you know Mr. Hurd?

A. Yes, I know him when I see him.

Q. Where does he live?

A. 116.

Q. Bryant Street?

A. Bryant Street, Northwest.

Q. Will you tell the Court the first time you saw him, and just what occurred between you and Mr. Hurd?

A. Yes, sir. The first time that I saw Mr. Hurd was the day that he moved in, possibly a year ago last May, I think it was, and I went up to him and asked him if he was the owner or was the one that had bought the house and was the owner and was moving, the day he moved in. He said he was, and he said—I asked him “Are you a Negro,” and he said “I am.” And I asked “How about your wife?” He said she was; then I said to him “You don’t know, then, that there was a covenant in the deed to this property prohibiting negroes from moving in?” He said “I did not.” I said “It is strange because the title company has always been very careful about telling

55 the people who have bought these houses, and pointing it out to them.” He said “I wonder why they didn’t tell me?” I said that “I can’t tell.” Then, I asked him who sold him the property and he informed me that he did not know who sold him the property, and I went on to talk to him, I said “It is just too bad, because this may be a case of your having to move out.” I said, “Because some other ones have moved out that have gone in to these houses,” and I finally said “Did Richmond sell you this

house?" and then he admitted that Richmond sold the house to him.

Q. Is he still living in the property?

A. Yes, sir. And then he told me his name was Hurd, and he asked what my name was and I told him, I said "Mrs. Hodges." And he said "Mrs. Hodges, I think you will probably find out that we will be as clean as a lot of white ones will." I said "I don't dispute that, but," I said "That isn't the issue. The covenant has been violated and that is the thing we don't want to happen."

"Now," I said, "Mr. Hurd, there is lots of people along here who are elderly people and they will have to move probably if the colored come in, it will force them out," I said, and "Just think, I have been in my home since the time I was married almost 30 years ago, in October," I said "I don't want anything to force me out of my home," and I said "That is probably what you are going to do here."

56 So he finally said "Well, of course we are not socially inclined"——

Mr. Houston: If your Honor please, may I simply note that the fact that what is admissible against Hurd has no relevancy as to any of the other defendants in the other case.

Mr. Gilligan: I haven't asked against any of the other defendants.

Mr. Houston: The cases are consolidated.

The Court: It may apply only to Hurd, and I suppose Mrs. Hurd.

The Witness: Mrs. Hurd, the two of them.

And, well, I said——

The Court (Interposing): I suppose it would be binding against her, perhaps.

Mr. Houston: I would like to reserve that.

The Court: In other words, I suppose it will be shown that they had a joint ownership in the property, will it not?

Mr. Houston: As a matter of fact, I think it is stipulated.

Mr. Gilligan: It is admitted that they are joint owners.

The Court: Then, whatever one says will be binding against the other..

Mr. Houston: I don't think so, not generally, your Honor; may be an act reflecting at a collateral conversation——

57 I should say the answer is no. Hearing a personal conversation, going into the predelictions and desires

between Mrs. Hodge and Hurd himself; she is talking about what he would do; she was talking about that. I don't think — is binding on other than the personal parties to the conversation.

The Court: Well, the record may so indicate at this time. If later it is determined that it will bind Mrs. Hurd, it may then be considered.

Mr. Houston: I don't know whether I caught the last part in regard to Mrs. Hurd—what?

The Court: That it might be later considered as to whether it binds her or not.

By Mr. Gilligan:

Q. Mrs. Hodge, have you ever seen Mrs. Hurd?

A. No, I never have seen Mrs. Hurd, to know her.

Q. Have you seen any women going in and out of Mr. Hurd's house?

A. Well, yes, I have seen people going in and out. Of course I don't know whether they live there, but going in and out.

Q. Have you seen the same woman going in and out frequently?

A. No, I can't say that I have. Of course I live quite a little way, and wouldn't.

Q. But you have seen people going in and out frequently?

58 A. Yes, I have seen colored people going in and out.

Q. Have you seen any white people?

A. I have not.

Q. You are sure those going in and out have been negroes?

A. I am sure they have been negroes.

Q. Directing your attention to the houses west of 152 Bryant Street, how are they occupied?

A. Well, there are eleven that are occupied by negroes, where they don't have the covenant.

Q. Will you tell his Honor now how long they have been occupied by negroes, if you know?

A. Around between 18 and 20 years at least, possibly a few more, but at least 18 or 20 years they have been occupied.

Q. Will you tell his Honor, if you please, just what the north side of Bryant Street in the 100 block is improved with?

A. The north side of Bryant Street is part of the McMillan Park Reservoir, with no houses whatsoever, from First down to Second.

Q. How about between Second and Fourth Streets on the north side of Bryant Street?

A. Well, there is a pumping station there, and a garage, the garage first.

Mr. Houston: On the north side?

59 The Witness: North side, and the pumping station —well, the garage comes first, and then a pumping station, well, there are yards connected with the Water Department there, and the very last down to Fourth Street is a very old house, old landmark, that is on the north side.

By Mr. Gilligan:

Q. How about the south side of Bryant Street, west of Second Street?

A. Well, on the corner there is a pipe yard, and next there is a repair shop for the District cars; and then, there are homes that are occupied by colored, from there on through to the school, above Third.

Q. Do you know then, Mrs. Hodge, directing your attention to any further occupancy of the homes in the 20 houses under deed covenant, have you observed whether or not any colored people have occupied any of those homes?

A. Oh, yes, 118 is occupied by colored; 150 is occupied by colored, and 134 will be colored by tonight.

Q. What do you mean by that?

A. Moving in this afternoon.

Q. Moving in this afternoon?

A. Yes.

Q. By whom?

A. Mr. Savage.

Q. Have you met him?

60 A. Yes, Saturday in my home.

Q. Tell what occurred then.

A. He came for the keys that Mrs. Petit had left and asked me to give to Mr. Savage, and he came to the front door, after dark, and my husband went to the door and called me, and I came up, he came back and said "I would like to have the key," he said "I am Mr. Savage, who is moving in next door, and I would like to have the key."

Q. What color was he?

A. A negro.

Q. No question about it?

A. No question about it.

Q. Have you seen the people in 118?

A. Yes, they—the Rowes, I have seen them.

Q. You have seen them?

A. Yes.

Q. Can you identify them?

A. Well, I can't really say that I can do that, because there are several there. I can identify rather a little colored woman that is in there, and the one I judge is Mr. Rowe is a dark man.

Q. How about the others?

A. The other one that I have seen there, a little girl who is about eight, I would judge, and was definitely a colored child, a negro; and there was a boy; whether he is
61 still there I don't know; about eight or nine, who is definitely a negro.

Q. All that you have seen are colored?

A. All I have seen going in there are negroes.

Q. Have you seen anyone going into 150 Bryant Street?

A. Well, yes I have. I saw, the day before, a couple of days before they moved, two going in; one was a rather medium colored woman, and the other was quite dark, a boy about 18 I would judge, who was dark, and I have seen a younger man, very dark, and an old colored man who has been sitting on the porch out there.

Q. All colored?

A. Yes.

Q. In connection with that time you saw them two days before they moved in—

A. (Interrupting:) Yes.

Q. What did you do in connection with any suit against these people, if anything?

A. Well, after I found them, and—let's see, there was the first one, they moved in before the Rowes did; I immediately got in contact with my lawyer, Mr. Gilligan.

Q. What did you do as a result of seeing them in there?

A. Well, as the result of that, we had another injunction drawn to restrain these negroes from moving in until this suit could come up.

62 Q. Did you, after talking with your lawyer in connection with these people being in the house, did you make any telephone calls?

A. You mean telephone calls,—oh, yes, 152, I called Mr. Horad, who I understand—no, 150, I mean, where Mrs. Stewart went in, I called Mr. Horad and—

Mr. Urciolo (Interposing): I object to what Mr. Horad may have said.

Mr. Gilligan: She may have said what she asked.

Mr. Urciolo: No objection to that.

By Mr. Gilligan:

Q. Do you know who Mr. Horad is?

A. I know he is a real estate dealer, that is all.

Q. Do you know his color?

A. No, I don't know his color, having never seen him.

Q. Did you or did you not get in touch with the United States Marshal in connection with the two women who were in the house?

A. I did.

Q. Just what happened?

A. I called the United States Marshal and told him—

Mr. Houston: I object.

The Court: Sustained.

By Mr. Gilligan:

Q. You got in touch with the marshal?

A. I got in touch with him.

63 Q. Did you later see the marshal go into the house?

A. I saw the marshal go in the house. Of course I didn't see him deliver the paper, but I saw him go in there.

Q. Can you tell the Court on what day the Stewarts, and whoever those people are in there with Mrs. Stewart, moved into the house?

A. I think it was the 9th they moved in.

Q. Of what?

A. Of August.

Q. 9th of August?

A. Yes, 9th of August.

Q. And can you tell the Court when the Rows moved in to their house?

A. Not definitely.

Q. Before or after the Stewarts?

A. After the Stewarts.

Q. So it would be after August 9th?

A. Yes, it would be after August 9th.

Q. And so far as the Savages are concerned at 134, they had not moved in until this morning?

A. They had not—they started to move in this morning.

Q. They did?

A. Yes, they were moving when I left.

Q. Have you seen Mr. Urciolo, owner of that property, have you seen him up around there?

64 A. Yes, sir, I have seen him around there.

Q. Have you observed any other colored people looking at the other three houses which he owns?

A. Yes, they were looking at 144.

Q. Does Mr. Urciolo own that?

A. As far as I know, he does.

Q. Have you seen any looking at 126?

A. Yes, I have seen them go in there—126.

Q. How about 152?

A. No, 152—I have not seen anyone go in there.

Q. But you have seen colored people other than those in the community looking at the houses?

A. Yes, sir.

Mr. Gilligan: I think that is all, Mr. Houston.

Cross-examination.

By Mr. Houston:

Q. Mrs. Hodge, when you first began thinking about buying on Bryant Street, what was the condition of the surrounding neighborhood as to improvements—as to being built up?

A. Well, it was fairly well built up. Second Street was not cut through.

Q. Second Street?

65 A. No, it was not cut through, and no houses, in fact there was a farm right there where the Lincoln apartments now stand, when we first went there; but the rest of the houses, it was all improved by nice houses.

Q. You mean that 154 and 156 and 158 had all been built?

A. No, they had not.

Q. They had not?

A. No, they had not, they went from the corner down, though, and included, we are 136—'40, '42, I think was the last—no, '40 was the last—those five houses. Below there there were six houses—were not built.

Q. All right; at the time you bought 140 was the last house; is that right—that is right?

The Court: She didn't understand your question.

By Mr. Houston:

Q. At the time you bought, 140 Bryant was the last house?

A. Yes, that was the last house.

Q. Going west?

A. Going west; no, it wasn't the last house, there were houses below that, but there was an interim of six houses that were not built, but 154 to Second, they were built.

Q. I see. 154?

A. Including 154.

Q. 154 to Second had been built?

66 A. They were built.

Q. Did you ask the real estate agent when you went to buy your house, 136 Bryant Street, as to whether the houses 154 Bryant Street down to Second Street were also covenanted?

A. No, I didn't ask anything about it.

Q. Were you concerned at that time in living in a neighborhood where all the people looked like white?

A. Why, certainly they looked white when I moved in that neighborhood, all the way down.

Q. All white?

A. All white.

Q. How do you know they were all white? Did you inquire of them as to whether they were white?

A. Certainly I could go and ask them, but they were like I am, and I know I am white.

Q. And as a matter of fact there are many negroes that cannot be distinguished from white, are there not?

A. I don't think so. There is always a look with regard to their eyes and nose that would give them away, as a rule. I won't say all the time, but as a rule.

Q. Well, you do say that there are some who may not be distinguished?

A. I presume that may be. I have never run up against one that I couldn't distinguish.

Mr. Urciolo: I didn't hear that last remark.

67 The Witness: I have never seen one that I could not distinguish. There may be some that I can't.

By Mr. Houston:

Q. We will give you an opportunity, Mrs. Hodge, before the case is over.

A. All right.

Q. Mrs. Hodge, what about Adams Street, had it been built up at the time you bought?

A. It was.

Q. That is, the 100 block of Adams Street on both sides had been built up?

A. Yes.

Q. Did you inquire whether the 100 block of Adams Street was covered by the same covenant?

A. I did not inquire about it. I was only concerned with Bryant Street where we were buying. In fact, we didn't even know anything about the covenant at the time, we didn't know there was such a thing in the city until Mr. Stafford I think his name was, agent for Middaugh and Shannon, told us—

The Court: Just answer the question.

The Witness: All right.

By Mr. Houston:

Q. So that when Mr. Stafford told you that this property had a covenant on it—

68 A. Yes.

Q. You say that had an inducement, that was an inducement to you to buy?

A. Certainly it was.

Q. Well now, if that was an inducement for you to buy, why didn't you ask him how many other houses had covenants on them?

A. I just don't suppose we thought about it; that is all.

Q. The point is, you did not ask?

A. I did not—no.

Q. The point is, when you bought you didn't know?

A. No, I did not.

Q. Now, you went into possession, let's see, in 1909?

A. Yes.

Q. Now, in 1909, where were the nearest obviously negroes living?

A. Down at Florida Avenue, below Florida Avenue on Second Street, as far as I can remember.

Q. Since that time the negro population has swept northward until it is now on Bryant Street?

A. Yes.

Q. Do you know of any white people or persons looking like whites, living between Florida Avenue and Bryant Street, except Jewish merchants and other merchants, west of First Street, except for what you say some of these houses on Bryant Street you are talking about?

A. West of First? On First, you mean?

Q. No, not on First, west of First.

A. West of First—no, I don't recall anybody living down there at all.

Q. So that west of First Street the negro population has swept solid northward up to and including Bryant Street, beginning at 154, and now is infiltrating, so to speak, into the 20 houses you are talking about; is that correct?

A. That is correct.

Q. Now, Mrs. Hodge, when did the negroes move in? How long was it that the negroes—how long has it been since the negroes have been living around back of you on Adams Street in the same square in which you are living?

A. Well, it has been—part have been there I would say around nine or ten years; the ones from 133 to First Street, to the alley; below that, they are the ones that have been I think about, well, between two and three years, I would say.

Q. Now, the people who are negroes and who have been living there two or three years live directly behind your house, do they not?

A. Yes, they do.

Q. Mrs. Hodge, when was the first time you had occasion to go to Mr. Gilligan with any of these properties on Bryant Street being rented to or occupied by or sold to negroes, how long ago?

A. I would say that has been about 18 years ago, probably; 18, possibly 20 years ago.

Q. Now, at any time during those eighteen or twenty years did Mr. Gilligan tell you how extensive the covenants

were, Middaugh & Shannon covenants in that particular neighborhood or area?

Mr. Gilligan: It is immaterial, if your Honor please, for her to answer that question; that is hearsay.

Mr. Houston. You are her counsel.

Mr. Gilligan: I can answer; put me on the stand.

Mr. Houston: It is a question of what action they took.

Mr. Gilligan: It is a question of what occurred to her.

Mr. Houston: That is right. I want to know what information she had.

The Court: Objection sustained.

Mr. Houston: Let me make this tender: I am not interested in the proposition as to what counsel said, just the words, I am interested in this lady's knowledge of her neighborhood, what she considered to be her neighborhood. I am interested in her knowledge regardless of what the source is. I wish to probe her source of knowledge,
71 because I am pleading change of neighborhood, and that is, what activities she took to maintain her neighborhood in the state she says she wants it.

The Court: You think the Court should require her to tell the advice or information which her attorney furnished her?

Mr. Houston: If they don't stand on the ground of confidential communication, if he wants to raise the objection of confidential communication, I withdraw any further questions. I also understood, however, the matter of confidential communications was a privilege to be exercised by the witness, and that it wasn't a bar against opposing counsel to make inquiry.

Mr. Gilligan: If your Honor please, inasmuch as Mr. Houston puts it that way, my object always in these cases is to get before the Court all the facts that are there, and if Mrs. Hodge can answer the question as to what I said to her, what she ought to do—I have no objection to her doing so, because I want your Honor to have any facts.

The Court: You may answer.

By Mr. Houston:

Q. We are back now, Mrs. Hodge, about 20 years—excuse me for sitting down, it is not a discourtesy to you, please, but it is just that I am tired; otherwise I would be on my feet (sitting down at the counsel table).

A. I don't think it makes any difference.

72 I know when we first took this up with Mr. Gilligan, as far as I was concerned, I was practically the only one concerned in it. I asked Mr. Gilligan about the covenant and then he told me how far down they went on First Street, on both sides, and up from First up to Channing, First Street to Channing, from Bryant up to Channing, and that was of course when we first started in observing the negroes moving in.

Q. Now, did he also tell you that there — covenants, the same covenants, on Adams Street and on Flagler Place?

A. I think he told me that some were part of the covenant and some were not.

Q. Told you the houses back of you were covenanted?

A. Immediately back of me, to the alley, were covenanted.

Q. Yes. Now, Mrs. Hodge, when you found those houses immediately back of you, which were covenanted, went to negroes, did you take any action to prevent it?

A. No, I didn't because it didn't concern my street; it was not concerning me at all. I felt that way, Mr. Houston. Those people over there could do their own fighting; I was fighting for my own street and home.

Q. So that you were not concerned about the matter of Adams Street at all, even though it was the same covenant and meant that negroes were coming closer?

73 A. I felt that I had enough to think about and fight for on my own street. I felt that somebody over there could take the reins over there and fight that out.

Q. When you saw, Mrs. Hodge, that they were evidently not successful and the negroes were staying there, did you then take any action?

A. No, none at all.

Q. Had you ever taken any action?

A. No, I have not. I was concerned with my own house, my own street and neighbors.

Q. Now, Mrs. Hodge, you say you made no inquiry concerning the rest of the houses, say 154 down to Second Street?

A. No, sir.

Q. Now, 18 or 20 years ago—strike that. How rapidly did those houses go colored?

A. Well, they went rather rapidly after the first one was sold.

Q. Did you at that time make any inquiry to see whether those houses were under covenant?

A. Yes.

Q. Did you at that time go to the white owners who were remaining and ask them to join in to a restrictive agreement so that no more houses would be sold to colored?

A. Yes, sir.

Q. Did they agree?

74 A. Yes, sir.

Q. They did agree?

A. They agreed and they all signed, everyone along there everyone of the people who had covenants on their houses signed this restrictive covenant; it was for the term of 20 years, a 20-year covenant; is that what you mean?

Q. Yes. Let me get that clear, because it is very important. As I understand you, your statement is that when the first house was sold on Bryant Street you enlisted, you took action to try to get a restrictive agreement covering the whole square; is that correct?

A. I personally did not, Mr. Houston, but the men in the neighborhood did.

Q. Will you name them?

A. Possibly I can't name them. Mr. de Bettencourt.

Q. Who?

A. deBettencourt.

Q. Where did he live?

A. He lived in about 156, I think, in one of these porch houses, between 154—about 156.

Q. And where is he now?

A. I don't know whether he is in the city or not.

Mr. Gilligan: He is not living in that house, at any rate.

By Mr. Houston:

75 Q. He has moved?

A. Oh, yes, he has moved. Those houses were not covenanted then, you see.

Q. Yes; and who else?

A. I don't know that I can tell you the names of all of those people, because that was sometime ago.

Q. Did Mr. Hodge—

A. Yes, my husband, he was one of them.

Q. Do I understand that they were successful in getting a restricted agreement which stretched all the way down to Second Street?

A. Not at that time, I don't think.

Q. Did they ever have a restrictive agreement which stretched—

A. We had one already, everyone had signed, and then when a committee, whoever had attended to it, went back to get them to acknowledge their signatures, Mr. Costello struck a line through his name and wouldn't identify his signature, so, of course, there wasn't anything more to be done.

Q. So that there was no—

A. That stopped it.

Q. So that you had been defeated in trying to keep it, the 100 block of Bryant Street, white?

A. We were, so far as that was concerned, yes.

Q. And that was how long ago?

76 A. About twenty years ago, I think, between eighteen and twenty; it might have been a year or two more.

Q. As a matter of fact, Mrs. Hodge, there is no uniformity of houses, of types of houses, in that block, is there?

A. No.

Q. In other words, they have been built at different times?

A. Yes.

Q. Built in different styles?

A. Yes.

Q. And some have porches, some don't, some have light brick, some dark red brick?

A. Yes.

Q. Some have garages, some don't have garages; there is a wide variation of types of houses?

A. Yes, certainly.

Q. Now, do you know how long the houses—strike that.

Then, Mrs. Hodge,—well, you didn't consider whether you were taking a risk or not when you bought your house in 1909, that the neighborhood would change to colored?

A. Certainly not, because it was all white at that time.

77 Q. And you did nothing to guarantee yourself, at that time, that you bought the house?

A. We thought we were guaranteed with the covenant in the deed.

Q. That protected your house only, did it not?

A. Certainly, protected mine and all the rest that had it along there.

Q. I see, but you didn't make any inquiry to see whether all the rest had it, did you?

A. No, certainly not.

Q. Now, how many of the original purchasers are still living in the square, in the houses, that is, the 20 houses under the deed covenant?

A. Mr. Wrightsman, who lives at 120.

Q. Mr. B—

A. B. J. Wrightsman.

Q. 120 Bryant Street?

A. Yes.

Q. He is not a party to this suit, is he?

A. No, he is not.

Q. You contacted him, did you not?

A. Yes, sir, but his wife passed away before this suit was filed and he did not own the property.

Q. What?

A. He did not have the property in his possession at that time, when we signed it. Yes, I contacted him.

78 Q. And he has not joined since, has he?

A. No, he has not.

Q. All right, who else?

A. Mrs.—Miss Lanigan is still in the original house.

Q. Who is she, a daughter?

A. Daughter of Francis M.

Q. And Miss Lanigan's name is what?

A. Loretta.

Q. L-o-r-e-t-t-a?

A. L-a-n-i-g-a-n.

Q. Daughter of Francis, and her address?

A. I think it is 122.

Q. All right.

A. And Mr. and Mrs.—

Mr. Gilligan (interposing): If Your Honor please, I am pursuing the usual course by not objecting, but I don't see whether it makes any difference who was the original occupant of the houses, whether the houses are rented or whether they are new people, or anything about it, if they are all observing this covenant.

Mr. Houston: May I make a statement?

The Court: Yes.

Mr. Houston: I think it makes a great deal of difference, on changing the neighborhood. Neighborhoods change and decay like humans. In other words, there would be
79 no place for the operation of equitable change unless I was able to show the neighborhood was gradually changed.

The Court: Go ahead.

By Mr. Houston:

Q. All right, Mrs. Hodge.

A. And Mr. Hodge and myself, Frederic E. and Lena A. Murray Hodge.

Q. Just a moment, Mrs. Hodge. That is 136.

A. Yes.

Q. Did you call another name I didn't get?

A. Those are the only three original occupants.

Q. Who did you contact, Mrs. Hodge, to be a plaintiff in this case? Who refused or failed to join in the case?

A. Well, Mrs. Johnson, who lives at 114, her daughter is interested, she wanted to become a plaintiff but the mother would not.

Q. Mrs. Johnson. All right. Now, then, there were the Wrightsmans?

A. Wrightsman.

Q. All right, who else?

A. Mrs. Garzoni.

A. And what is their address?

A. I don't know whether it is 157 or 159 Adams Street.

Q. No, no—the house?

A. The house next to me, 138.

80 Q. Now, in respect to the matter of neighbors, do you visit Mr. and Mrs. DeRita frequently?

A. Certainly, they are my neighbors.

Q. Does she visit you?

A. Why, certainly.

Q. And Mrs. Giancola?

A. Yes, we are very close friends.

Q. Does that mean that you visit back and forth?

A. Yes, sir.

Q. How frequently?

A. Well, you can't tell, exactly how many times.

Q. Approximately?

A. Frequently.

Q. Every week?

A. Yes.

Q. And how about the Marchegianis?

A. I was very friendly with them until they moved away, I don't see much of them now.

Q. Have you been to see them since they moved?

A. Oh, yes, they have been to my house several times.

Q. I said, have you been to see them?

A. No, I have not.

Q. How many other persons do you visit in this square?

81 A. I go up to see Mr. and Mrs. Wrightsman, or did, before she passed away, and Mr. Wrightsman visits, and I go next door to my neighbors at 138 to see them,—go down to see Mrs. Luskey at 148.

Q. Now, have you had any trouble with the negroes in the square?

A. No, we have not had any trouble with them.

Q. I am talking about the square for the 18 and 20 years they have been there.

A. No, we have not had any trouble.

Q. Never had any trouble with them?

A. No, indeed.

Q. Now, Mrs. Hodge, at the time that you were first moving into the square, as I understand it, you said that nobody was living there who looked like a negro, is that correct?

A. It certainly is.

Q. For 18 or 20 years there have been persons who looked like negroes living in this square?

A. Certainly, the ones down at the end of those 11 houses.

Q. You wouldn't call it any longer a white square?

A. Well, it is two-thirds white, or was.

Q. White? Or was? Let me ask: You call the square white, up to what extent?

A. 75 percent.

Q. 75 percent makes a square white?

82 A. Yes, I would say.

Q. After 75 percent it is no longer white, is that right?

A. No, not when there are negroes there.

Q. Even though 25 percent negroes are there, it is still a white square if there are 75 percent white?

A. That is the way I look at it.

Q. So, one-fourth is your dividing line?

A. Well, one-fourth down there,—yes.

Q. So there would not be any use of issuing an injunction unless you could get the negroes down to one-fourth in this square?

The Court: Isn't that a question for the Court?

Mr. Houston: I think it is a question for her. She is the one who is here asking to invoke the aid of the Court and if she feels it would be futile, it seems to me she is in a position where the request should be withdrawn, I don't—

Mr. Gilligan: If she thought it was futile, she would not be here.

Mr. Houston: I don't know.

Mr. Gilligan: That is right.

Mr. Houston: She may be doing a lot of thinking on it that she may not have done before.

The Court: The Court thinks that is a question for
83 the Court to meet.

Mr. Houston: May I have an exception on the ground—

The Court: You have an exception.

Mr. Houston: I want to put my objection in the record on the ground that a court of equity or a court exercising an equity jurisdiction will not do a vain thing and if the defense can establish, out of the plaintiff's own mouth, on cross-examination that it would be futile to issue the injunction, I say the question is a proper question and should be allowed, sir.

By Mr. Houston:

Q. Now, Mrs. Hodge, this covenant is addressed simply to negroes, isn't that true?

A. Yes, sir.

Q. So it would make no difference to you if Chinese came there?

A. I wouldn't like it very well.

Q. But you could not do anything about it?

A. No, because this specifically says negroes or persons of negro blood.

Q. Or if Puerto Ricans and Cubans came in, Brazilians, no matter how dark they were, just so long as you could not establish the fact that they were negroes, you could not do anything about—?

A. Of course, they would not be negroes if they were Cubans, or anything like that.

Q. So that it is not color that you object to, am I right on that? It is not the color of the skin you object to?

A. Well—no. It is the race.

Q. I see. Now, suppose, Mrs. Hodge, it was a very, very light negro, say 99 percent so-called white blood. That would make no difference despite the fact that you say 75 percent would make the block white?

A. It would still be a negro, I think.

Q. And it would not make any difference?

A. No.

Q. If you got a person in the block who was supposed to be white and that person was undesirable, in the sense of untidy or something like that, you couldn't do anything about it?

A. No, certainly we couldn't.

Q. And you would prefer that untidy white person to a negro, no matter how educated or cultured?

A. As long as they are white, I would prefer them.

Q. No negro, no matter how, or whether he might be Senator or Congressmen, it would not make any difference to you?

A. It wouldn't make any difference.

Q. Even if the white man just came from jail, you would prefer him?

A. Because he is white and I am white.

85 Q. How do you know it?

A. Because all my ancestors have been white.

Q. How do you know that?

A. How do I know that?

Q. Yes.

A. All my descendants—they were all white.

Q. How do you know that?

A. How do you know that you are a negro?

Q. I know that, because you all say I am.

A. I know that you are, and I know that I am white.

Q. We won't pursue that.

Now, Mrs. Hodge, how many of these houses are occupied by their owners now, as distinguished from being occupied by tenants?

A. Well, 114 is occupied by the owner.

Q. Let's do down.

A. 114 is occupied by the owner. Do you want me to include the negroes, too?

Q. Yes, I don't object.

A. 116 and 118—

Q. You are going a little fast for me.

A. What is that?

Q. 114 is occupied by owners?

A. Yes.

Q. Will you tell me, if you know, when they bought?

86 A. Well, no, I can't tell you that; but it has been 20 years or more ago that they have been in there.

Q. Now, you say 116 is owner-occupied? And that colored—

Mr. Gilligan: Do you admit it?

Mr. Houston: No. I said she says—

The Court: Do not repeat her answer. Let her answer stand the way she put it.

Mr. Houston: All right. The only reason I did that, Mr. Gilligan and I were having a little side contest.

The Court: Leave the Court out of it.

By Mr. Houston:

Q. 118, Mrs. Hodge?

A. That is occupied by Mr. Rowe and his family.

Q. Now, tell me, just before the last white occupant in 116, was it an owner or a tenant?

A. 116, there was Mrs. Rooney, she was the owner.

Q. 118?

A. No, that was occupied—that was rented.

Q. All right, 120?

A. That is owner-occupied.

Q. That is the Wrightsmans?

A. Yes.

Q. 122?

A. That is owner-occupied.

87— Q. That is Lanigan. 124?

A. I think that is where Mr. Pearson lives, that is owned by Mr. Gorgiolo.

Q. How about Marchegiani?

A. No, that is Marchegiani, 124, and they own it.

Q. Now, are they there now?

A. No.

Q. Who is there now, tenant or what?

A. They have a tenant, white tenant.

Q. So 124 is tenant, is that right?

A. Yes.

Q. 126?

A. That is one of Mr. Urciolo's houses.

Q. Tenant or owner-occupied?

A. Tenant.

Q. 128?

A. Tenant—no, that is owned by Mr. and Mrs. DeRita.

Q. Now, 130?

A. It is owned by Mr. and Mrs. Giancola.

Q. 132?

A. That is tenant-occupied, occupied by Mrs.—Miss Skinner and her brother.

Q. 134?

A. Owner-occupied now by Mr. Savage.

Q. Now, just before Mr. Savage, what about that?

88 A. Well, that was occupied by Mrs. Pettit, and her family.

Q. Tenants?

A. Tenants, yes.

Q. All right. 136 is your house.

A. That is my house.

Q. 138?

A. Owned by Mrs. Garzoni, occupied by a tenant.

Q. 140?

A. Owned by Miss Pyles and occupied by a tenant.

Q. 142?

A. I don't remember the name, who owns it, but it is a tenant house, at any rate.

Q. Did you contact the owner to try to get the owner to come in to this suit?

A. Yes, sir, I did.

Q. How did you contact him?

A. I can't remember. If I remember, I will tell you.

Q. The owner did not come in?

A. No.

Q. 144?

A. That is tenant-occupied, I think that is one of Mr. Urciolo's houses, too.

Q. 146?

A. That is owner-occupied.

89 Q. Who is that?

A. The name is Perdue.

Q. Did you go to them to ask them?

A. I did, and he promised me half a dozen times to bring in his deed, but I don't know why he slipped up.

Q. But he did not join?

A. I got through asking him.

Q. He didn't join?

A. No.

Q. 148?

A. Mrs. Luskey's house, owner-occupied.

Q. And 150?

A. Occupied by Mrs. Stewart, I think, now.

Q. All right, before Mrs. Stewart.

A. Mrs. Anselmo, and she was a tenant.

Q. 152?

A. Well, I think that is another one of Mr. Urciolo's houses, tenant-occupied by a Mrs. Amoia, I think the name is, I can't tell you how to spell it, but that is the nearest I know.

Q. How many foreigners are in your block, persons of foreign descent?

A. Well, the DeRitas, Machegianis—

Q. DeRitas, just a minute.

A. Giancolas.

90 Q. Just a minute, the DeRitas; let's take 114, and go on with the names of the foreigners or natives, as far as you know.

A. As far as I know, they are natives.

Q. All right. And 116, natives or foreigners?

A. Natives, as far as I know.

Q. 118?

A. The same.

Q. 120?

A. They are, well they are natives, Washingtonians, have been for years, but not born here.

Q. I meant, Americans.

A. Well, they are Americans.

Q. The Wrightsmans are Americans?

A. Yes.

Q. And 122, the Lanigans?

A. They are Americans.

Q. Now, 124?

A. Well, they are Italians, the Marchegianis.

Q. 126?

Mr. Gilligan: That is Mr. Urciolo's.

The Witness: That is Pearson, they are Americans, too.

By Mr. Houston:

Q. Are they tenants, or what?

A. They are tenants.

91 Q. 126 is a tenant. 128?

A. Mrs. DeRita, Mr. and Mrs.—they are Italians.

Q. They are. 130?

A. Mr. and Mrs. Giancola, and they are Italians.

Q. 132?

A. Americans.

Q. 134?

A. Well, I suppose they are Americans, too.

Q. 136 and 138?

A. 138, they are Assyrians.

Q. 140?

A. Americans.

Q. 140 you said were Americans?

A. Yes.

Q. 142?

A. 140, yes. 142, they are Americans.

Q. Just to get straightened out, I am not criticising, I am trying to write this out, 140 is American and 142?

A. Yes, both Americans.

Q. 144?

A. Americans.

Q. Now, 146?

A. Americans.

Q. What was—I got it—148?

A. Americans?

92 Q. 150?

A. Well, they are negroes, I guess they are Americans.

Q. 152?

A. They are Italians.

Q. Now, American Indians—

Mr. Gilligan: If Your Honor please, are we going to go—

Mr. Houston: I am going to make a claim that M. R. Hurd is an Indian.

The Court: Let's hear the question, then I will hear your objection. What is the question?

By Mr. Houston:

Q. Is there anything barring American Indians for occupancy?

A. Not that I know of, I don't.

Q. Although they are of copper colored skin, you have no objection to them?

A. No, they are Indians, they are Americans.

Q. Your sole objection is that they are negroes?

A. Yes.

Q. Now, there was a time when you say very few negroes in the neighborhood, isn't that true, Mrs. Hodge?

A. Yes.

Q. That was when you bought?

S. That was when we first moved out there, there was very few in the neighborhood.

93 Q. Very few?

A. Very few.

Q. Were you there at the time LeDroit Park had a fence around it?

A. No, I was in the city.

Q. Were you there at the time when Adams Street had not been cut through, First Street to North Capitol?

A. No.

Q. It had been cut through when you moved there?

A. Yes.

Q. But you said, there were no negroes from north of Florida Avenue to Second Street?

A. No.

Q. Practically no negroes were seen in that vicinity?

A. Very, very few, once in a while, but not as a rule.

Q. Now, did you ever go to McMillan Park, more to walk or just to take air, so to speak?

A. Yes, a good many times.

Mr. Houston: If Your Honor please, on the plat, first let me ask if Your Honor is familiar with that neighborhood up by Soldier's Pome?

The Court: I have some knowledge of that community there, yes.

94 Mr. Houston: McMillan Park is right across from Bryant Street, in the 100 block. I think it shows on that map (indicating). We have another map which we shall introduce at the proper time.

The Court: I do not believe it is shown.

Mr. Gilligan: It is a Government reservation, part of the filtration plant.

Mr. Urciolo: Your Honor, this has it all marked, it might show you (indicating map).

Mr. Gilligan: If that is the one that was used in the Adams Street case, we will be very glad to have it.

Mr. Houston: This (indicating) is McMillan Park.

Mr. Gilligan: Right now, Mr. Houston, all this is McMillan Park (indicating).

Mr. Houston: Yes.

Mr. Gilligan: A covered reservoir has been put under there.

Mr. Houston: That is right.

Mr. Gilligan: They hope that soon it will be restored.

Mr. Houston: This is the pipe yard that Mrs. Hodge talked about, the D. C. Pipe Yard.

Mr. Gilligan: That is a garage, this is a yard (indicating).

Mr. Houston: There was another she was talking about, a repair shop or garage over here (indicating). That is on the east of the pumping station. Here (indicating) is the old pumping station. The old thing has been there 95-96 for years; and the yard is west of the pumping station, and right here (indicating), I think, is the old yard.

The Witness: Right at the corner of 4th and Bryant.

By Mr. Houston:

Q. Right across from the school?

A. Across from the school, yes.

Q. They are the houses—these are the houses on Bryant (indicating) that you said were occupied by negroes?

A. Yes.

Mr. Gilligan: All west of it (indicating).

Mr. Houston: The houses west of the District garage, these are the houses marked in brown, they are negro, and the green here were—

Mr. Urciolo: All of the green are white.

Mr. Houston: This is not the present occupancy. This is the occupancy as of about four years ago.

Mr. Urciolo: '42.

Mr. Gilligan: About '42.

Mr. Houston: This is Defendant's Exhibit 13, previously marked.

Mr. Gilligan: So far as Bryant Street is concerned, it is correct, except where it is marked there—

Mr. Houston (interposing): Except the parts that are claimed to be colored?

97 (Witness Mrs. Hodge leaves stand temporarily.)

98 Thereupon DANA H. BROCKWAY was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name, please.

A. Dana H. Brockway.

Q. What is your business?

A. Secretary-treasurer, Realty Appraisal and Title Company.

Q. Realty Appraisal and Title Company?

A. Yes.

Q. Did you have occasion to settle the cases of Robert H. Rowe and his wife, and Herbert B. Savage and his wife and Pauline B. Stewart as to lots 113, 144 and 136 in square 3125?

A. Yes.

Q. Did you call attention to these people—call their attention to the fact that this deed covenant covered each of those houses against occupancy by colored people?

99 A. I will have to refresh my recollection by referring to the cases (examining records).

On the 134 Bryant Street—

100 The Witness: I did refresh my recollection from examining the case. I am sure that I referred to the covenant and restrictions of record.

By Mr. Gilligan:

Q. Did you do that with the other two cases, likewise?

A. Yes.

Q. You also were the Notary Public, were you not?

A. Yes, sir.

Q. And you took the acknowledgment of these three different people, Savages, Rowes and Stewarts to the deeds of trust securing Mr. Urciolo's second trust?

A. I believe so.

Q. I will assure you that you did.

A. I will have to look at the trust to be dead sure. My recollection is, though, that I also executed them.

Q. Then I may take it for granted that you did and for the record I will ask you if you observed the color of these people—did you?

A. Yes, sir.

Q. What was their color?

A. The purchasers of these three houses were colored.

Q. Definitely so?

A. Well, I would consider them colored people.
101 They may have been of mixed blood, or maybe others; for my observation, they were colored.

Q. Negroes?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Brockway, how many cases do you settle a day?

A. Well—

Q. Usually, approximately?

A. I guess an average of three, maybe four a day, some days I don't settle any, some others, I do.

Q. Approximately how long ago were these cases settled, just approximately, Mr. Brockway?

A. About March 29, '45.

Q. I wish you would answer, please, from memory. I said approximately—ten years, five months?

A. These cases are all within the last six months or a year.

Q. The last six months or a year?

A. Yes.

Q. Then approximately—then if you have three cases a day, you have approximately a thousand cases in the last year?

A. That is your question?

102 Q. Roughly.

A. Yes, I would say so. I think our records will bear me out.

Q. Therefore, Mr. Brockway, you probably would not be able to even recognize who the people are, would you?

A. That is reasonably so. I may recognize some. I have a knack of remembering faces. Sometimes it takes me a week or so to remember who they were.

Q. Consequently, you certainly cannot be dead sure as to whether you explained to these people that there were restrictive covenants on there or not?

A. Oh, yes, because I go into that, because it is a matter of record,—you see, our obligation is on a certificate of the record, what the record shows.

Q. Suppose the parties do not come in?

A. Then, of course, we take it for granted, we go ahead and file the papers. If we are not on inquiry, we are not under obligation not to record the papers, because the contract—

Q. (Interposing:) In other words, if no questions are asked, you make no assertions?

A. Exactly.

Q. One other thing, Mr. Brockway. In your own dealings at the title company, have you ever found a person who bought property there, that you had your doubts, 103 however small, that they—whether they are negro or white?

Mr. Gilligan: I object to this line of questioning.

The Court: Sustained.

Mr. Urciolo: If Your Honor please, the question is that these people are white—

The Court: I understand the question.

Mr. Houston: If Your Honor please, may I also ask, it seems to me that the competence of the witness to identify and distinguish certainly is material. In my opinion, if one says they are white—

Mr. Urciolo: This is cross-examination.

The Court: The Court has ruled.

Mr. Urciolo: Thank you.

By Mr. Urciolo:

Q. Then, will you say this, Mr. Brockway: You are absolutely positively, then, that the people who purchased these houses are negroes?

A. In my opinion, they are negroes.

Q. How do you arrive at that conclusion, Mr. Brockway?

A. I guess there is a distinction between black and white that is obvious from our own conception of people.

Q. What are they? That is what I wanted to find out. For example, I maintain sometimes it is impossible, what is your criterion as to the color of skin—what is it?

104 A. I don't know that I am qualified to go into the breeds of the Caucasian race.

Q. In other words, then, you admit you are not qualified and, therefore, you may be mistaken?

A. I admit nothing.

Q. Did you say you were not?

A. I don't know that I am qualified to trace the blood lines of the Caucasian race; but I can distinguish between white and colored from my associations; and in relation to the obligations I have to disclose the covenants. I may have made mistakes.

Q. Have you ever been in doubt?

A. On one or two occasions I have been in doubt.

Mr. Urciolo: Thank you, Mr. Brockway, that is all.

Mr. Gilligan: That is all.

Mr. Houston: I wanted to address my remarks
105-106 to the Court and point out the fact that Mr. Brockway testified as to the defendants in 29,943. He has not testified concerning any defendant in 26,192, other than because the cases are consolidated.

I have no questions.

113 Whereupon LENA A. MURRAY HODGE resumed the stand and testified further as follows:

Cross-examination (Resumed).

By Mr. Houston:

Q. Mrs. Hodge, we were pursuing a question of change of neighborhood yesterday. Let me ask you this:

114 When you bought your house, I think it was in 1909, is that correct?

A. Yes, sir.

Q. Had anybody else occupied it prior to you, or were you the first one?

A. The first one, the original owners.

Q. Had the other houses been built just about the same time that you mentioned, down to 140, or were they already occupied?

A. There were five houses from 132 to 140, but the houses from 114 to 130 had been built about, I think to the best of my knowledge, about three or four years previous to that.

Q. 132 to 140 built in 1909, is that what you would say?

A. Yes, sir, they were built in 1909. In fact, our house wasn't quite finished when we bought it.

Q. Now, at the time that you first bought,—no, strike that.

At the time you first moved into the neighborhood, were there any Italians in the 100 block of Bryant Street?

A. No, not that I recall.

Q. At the time that you first bought, were there any Assyrians in the 100 block of Adams Street?

A. No, there were not.

115 Q. Now, at that time that you testified, were the houses in the 100 block of Adams Street occupied by young people or people under middle age, would you say?

A. Well, I should say rather mixed ages from young ones to old ones. I wasn't very familiar with that neighborhood, those people, because I simply didn't know anything or anybody there and I didn't go around there; but I would say probably of our age, older and younger.

Q. Would you say that predominantly, when you moved into Adams—I am sorry, when you first moved into Bryant Street, the 100 block of Bryant Street, I have got some new teeth, you notice.

The Court: That is all right, well, get along.

By Mr. Houston:

Q. Would you say that the 100 block of Bryant Street was occupied by mostly young married couples, predominantly a community of young married couples?

A. Predominantly, they were.

Q. A community of young Americans?

A. Except the ones really from First Street down that way were older people, it was just about 50-50, I would say.

Mr. Gilligan: I am inclined to object to this line of questioning because I don't see that it adds anything to the facts in the case on which the decisions must be based.

116 It is not a question as to whether there were Italians living there at that time, the questions before this Court are whether in these 20 houses under deed covenant prohibiting negroes or colored people from occupying the houses, either by sale, lease and so on, whether they are now colored, or whether they are now white.

It does not make any difference whether they are 90 years or 15 years old, what difference does it make? Therefore, I am inclined to object to this line of questioning.

Mr. Houston: May I read from this authority (exhibiting document).

This is entitled, "Growth and Structure of American Cities," a study by the Federal Housing Administration, and I am reading from page 121. This is the same authority cited to the Court in *Hundley vs. Gorewitz*, and I think the Court received that:

"Forces constantly and steadily at work cause a deterioration of existing neighborhoods. A neighborhood composed of new houses in the latest model, all owned by young married couples with children, is at its apex. At this period of its vigorous youth, the neighborhood has a vitality to fight off the disease of blight. The owners will strenuously resist the encroachment of inharmonious forces because of their homes and their desire to maintain a favorable environment for their children. The houses, being in the newest and most popular styles, do not suffer from the competition of any superior houses in the same price range, and they are marketable at approximately their reproduction costs under normal conditions. Both the buildings and the people are always growing older. Physical depreciation of structure and the aging of families constantly are lessening the vital powers of the neighborhood. Children grow up and move away. Houses with increasing age are faced with higher repair bills. This steady process of deterioration has been signed by obsolescence. A new and

more modern type of structure relegates these structures to the second rank. The older residents do not fight too strenuously to keep out inharmonious forces. A lower-income class succeeds the original occupants. Owner-occupancy declines as the first owners sell or move away or lose their homes by foreclosure. There is often a sudden decline in value due to a sharp transition in the character of neighborhood or to a period of depreciation in the real estate cycle. These internal changes due to depreciation and obsolescence in time cause shifts in the locations of neighborhoods. When in addition there is poured into the center of the urban organism a stream of immigrants or members of other racial groups, these forces all will cause dislocations in the existing neighborhood pattern. The effect of these changes vary according to the type of neighborhood and can best be described by discussing each one in turn."

118

Now, at that particular point, I will not go ahead and extend that reading, unless Your Honor wishes me to.

The Court: Well, I take it, of course, the objection is that it is not proper cross-examination. It is your defense—

Mr. Houston: Well?

Mr. Gilligan: I should say it is both, if Your Honor please; not proper cross-examination, but in addition, where in the world did this become an authority in the courts? He read to me some cases where the courts have accepted something, to avoid our objection.

Mr. Houston: That was from *Hundley vs. Gorewitz*.

Mr. Gilligan: It isn't—

The Court: It is your objection, as I understand it, that it is not proper cross-examination?

Mr. Gilligan: Both not proper, and also entirely out of order.

Mr. Houston: May I make this statement:

She has testified without objection concerning her purchasing a house, concerning the neighborhood when they originally moved in there. I am simply carrying it out now and developing that in the cross-examination which has already been introduced without any objection whatsoever.

119 The Court: I will sustain the objection upon the ground that it is not cross-examination and reserve other consid-